IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 4957 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr. P.K. Dhakephalkar with Mr. A.A. Kocharekar for Petitioner.

Mr. J.J. Thakkar for Respondent No. 1.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 20, 2005

P.C.

. Rule. Heard forthwith.

. Notices to Respondent Nos. 2, 3 and 4 are dispensed with as they are formal parties.

. The Petitioners have decree in their favour. The execution of the decree was sought to be stayed by the Respondent No. 1 by filing objections. The Respondent No. 1 is Judgement Debtor. It is the case of the petitioners that when they sought to execute the decree, the same was sought to be objected by a stranger as an obstructionist. That was considered by the Executing court and that was rejected. There is a revision pending filed by the obstructionist. There is no interim relief

granted by the Revisional Court.

. That being the position, the petitioner applied to the Executing Court for getting the decree executed against Judgment Debtor as there were no longer any objections or any interim order warranting the executing court staying its hand in the matter of executing the decree. On the Petitioner applying for execution, the learned executing court passed an order of 8.4.2004. The court therein referred to its earlier order dated 19.3.2004 and quoted the said order. It is apparent from the order quoted that the warrant of possession was stayed till 26.3.2004 and notice was issued. It was set out therein that in view of that order, it was not possible for the court to give any specific returnable date to the bailiff as ad interim stay had been granted till 26.3.2004. The court then notes that in view of the order quoted in order dated 19.3.2004 the execution application has been disposed of and further has directed the bailiff to proceed as per order passed by C.R. No. 3. The court then proceeds to hold that the question of the court passing order to direct bailiff to execute warrant of possession does not arise and

accordingly rejected the application. In the application, the Petitioner decree holder had prayed to direct the bailiff Mr. M.L. Gaikawad to execute the warrant of possession pursuant to the order dated 19.3.2004 and to fix returnable date of the warrant of possession in the interest of justice.

. This is clearly a case of failure of the Executing Court to exercise jurisdiction vested in it. There was nothing before it not to proceed with the execution by fixing returnable date of the warrant of possession.

. On behalf of the Petitioner, learned counsel sought to rely on the Judgment of the Apex Court in Bramhadeo Chaudhary Vs. Prasad Jaiswal and another, AIR 1997 S.C. 856 to contend that once a stranger files proceedings to obstruct the execution of the decree, it is not open to the Executing Court to proceed with the execution. We are really not concerned with that issue as in the instant case, the objection by the obstructionist have been rejected. The Obstructionist has preferred revision application in which he has not obtained any interim relief. Even otherwise, the

ratio laid down in Brahmadeo (supra) is to the effect that the Obstructionist need not to wait to be dispossessed. He can under Order 21 rule 97 file objections to the Execution of the decree in which event the court then can proceed to consider said obstructionist notice on proceeding being taken out by the Decree Holder. In the instant case, respondent herein is Judgment Debtor. The ratio of Brahmadeo (supra) would therefore, clearly not to be applicable.

. In the light of the above, the following order :

. Application by the Petitioners herein dated 6.4.2004 is allowed. The Executing Court is forthwith directed within a period of ten days from today to fix returnable date of warrant of possession and by directing bailiff to execute the decree.

. Petition disposed of accordingly. No order as to costs.

. P.A. to issue authenticated copy of this order and all parties including the Executing Court to act on the copy of order so issued.

. R. & P. be sent to Lower court forthwith.

(F.I. REBELLO,,J.)